

Ann Dod, Magdalen
Johnson, Robert
Colbatch, Ann his
Wife, Sarah Dod,
and Robert Cooper,
and Priscilla his
Wife, Plaintiffs.

Thomas Burrowes, &
alias Defendants.

19 Aug. 1684. Thomas
the Elder died.

Thomas the Son died
4 Apr. 1687.

William died 9 June
(87.)

4 Decemb. (89.)

The CASE of Ann Dod Widow, Magdalen Johnson Widow, Robert Colbatch Gent. Ann his Wife, Sarah Dod Spinster, Robert Cooper Gent. Priscilla his Wife, Frances Dod Spinster, Charlton Hill, John Hill, and Rowland Hill Gent. on their Appeal to the Right Honourable the Lords Spiritual and Temporal in this present Parliament Assembled, from a Decree and Dismission made by the Lords Commissioners for the Great Seal in the Court of Chancery.

Thomas Lochar, the Elder Gent. Father of the Appellants, Ann Dod, and Magdalen Johnson, and Grandfather of Ann, Sarah, and Priscilla, being seized of an ancient Estate in Shropshire worth near 400 l. per Annum, and desirous to preserve the same in his Family, Deviseeth it to Thomas his younger Son, allowing William the Elder an Annuity of 40 l. and an Estate of 30 l. per Annum, for he being an extravagant person, and weak of understanding, was thought by his Father, as he often declared, *uncapable of managing the whole Estate.*

Thomas the Son becomes seized, having no Issue, and being careful that the Lands should continue in his Father's Name and Family, by his Will deviseeth it to the said William his Elder Brother, wherein he declares he did so, *Notwithstanding his said Brother William had several ways much disoblged and troubled him, especially in unjustly contesting his Father's Will, by a vexatious Suit in Chancery.* And further expressly declares, *That the Reason inducing him to make this Devise, is to the intent the said Estate should not go out of the NAME and BLOOD.* And by his Will charged the said Estate with several Legacies.

But he, as well as his Father, fearing the unnatural temper of his Brother William, the further to tie up his hands, and prevent him from making away the Estate from his Family, gives it him under this PROVISIO and CONDITION, *That if he should Refuse to pay the Legacies, or secure the same to the Content of the Legatees within convenient time, or should in any sort question his said Will, so as to draw the same into Suit or Litigation, That then the Appellants Ann Dod, and Magdalen Johnson being his Sisters, and Ann, Sarah, and Priscilla his Neices, should have the said Estate to hold to them and their Heirs as Tenants in Common, and not as joint Tenants, chargeable with the payment of the said Legacies, as his Brother William ought to have done and paid.*

William enters, and then the Legatees demand their Legacies, or Security for them; But he absolutely REFUSED to pay or secure any of them, affirming, *That he Claimed the Estate as Heir to his Father, and not by the Devise of his Brother.* But William, about Five Weeks after his Brother's Death, had a Fall from his Horse, and growing Sick upon it, was asked, *Who would have the Estate after his Death?* Answered, *It would go to his Sisters,* naming the Appellants: saying withal, *That all the World could not keep it from them.* Then a Will was contriv'd by one David Atkis Clerk, lately Deceased, who confesses he drew up the Heads of it, in whose House William then lodged, which he (being a Man easie to be wrought upon) was prevailed with to seal and publish, whereby it is declared, *That he acquiesced in the said Will of his Brother Thomas.* Yet contrary, not only to the exprels Words and Intentions of his Brother's Will, but also to his own Declaration, he unnaturally deviseeth the said Estate to the said David Atkis, and one Thomas Burrowes, a Serving-Man, the said David's Son-in-Law, being meer Strangers, and of no Kin or Alliance to the said William or Thomas, or any of their Family. And that the Attorney that put this Will into Form, might be well paid for his pains, hath thereby bequeathed 100 l. to his Daughter, a person unknown to the Testator, and no part of the Lands is left to any of his own Kindred, but one little Tenement of 5 l. per Annum to his Sister Johnson charged with 100 l. and other Lands of 20 l. per Annum, to his Uncle David Lochar, that was Intailed, which the said Attorney was employed to cut off, but failed to compleat it; so the Issue in Tail brought their Ejectment, and have the said Lands; And altho' he lived above a Month after the Sealing of this Will, yet he still persisted in REFUSING to pay or secure his Brother's Legacies.

Atkis and Burrowes, the Devisees of William, having not the Legal Estate by William's Will, he having not perform'd the Will of Thomas, sue the Appellants and the Legatees of Thomas in Chancery, praying, *That they might accept of their Legacies, and deliver up the Writings belonging to the said Estate, and release to them all the Right and Title to the said Estate:* Whereupon

The Appellants, Ann and Magdalen, and Ann, Sarah, and Priscilla, Exhibit their Cross-Bill, thereby setting forth, *That William had broken the Conditions of the Will of Thomas, and therefore pray'd that they might have the benefit of the Devise over by the Will of Thomas, they being the next of his Family and Blood, and having the Legal Estate, and there being no Equity to take it from them.*

These Causes came to be heard before the Right Honourable the Lords Commissioners for the great Seal, who Decreed, *That the said Devisees of William pay the Legacies bequeathed by Thomas with Interest, and that on payment thereof the Appellants should release to them all their Right and Title to the said Estate, (tho' in truth the Appellant Ann Dod hath no Legacy left her.)* And further Decreed, *the Appellants Bill should be dismissed without Costs; but if they should any further question the Devisees of William touching the said Estate either at Law or in Equity, that then the Appellants shall pay Costs;* And yet allow of no Costs to the Appellants Frances Dod, and the three Hills, who are only Legatees, and disclaim all Title to the said Estate.

By which Decree, the Appellants are very much aggrieved, they being Heirs at Law, and having the Estate vested in them; yet they are Decreed out of it by a Court of Equity, and that for the sake of Strangers, claiming not by any Purchase or Merit, but only under the said voluntary and unnatural Devise.

That 'tis pretended to justify the Decree that the Devise over to the Appellants was only in nature of a Penalty, and that there are divers Presidents where Relief has been given in such Cases: Whereto the Appellants answer,

First, That this is not like the Penalty of a Mortgage or Security upon lending Money at Interest, where Equity relieves against the breach of the Condition, by carrying on the Interest till payment upon the original Agreement for lending at Interest: But this being a Limitation in a Will in nature of a FAMILY Settlement, ought to have been strictly persued according to Thomas the Devisor's Intention therein declared, and wherein he had as great a regard to his Sisters and their Children, as he had to William his Brother, who refusing to perform the same, and the Estate being vested in the Appellants, Equity ought not to interpose, or controll the Law in this Case, especially for Strangers that claim under a voluntary Disposition in Disherison of Heirs, and that where no Compensation can be made.

Secondly, For that there are not any Presidents in Cases like this; but if there were, they are Innovations on the Common Law, and of dangerous Consequence, and such as ought to be avoided, rather than followed.

And therefore humbly pray the said Decrees may be Revers'd, that Burrowes his Bill may be dismissed, and that the Deeds and Writings may be Decreed upon these Appellants Bill.

The Case of Dod, and others
against Burrows.

1690

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The Case of Dod and others
against Burrows, to be heard

~~Thursday the 10th of February~~
Tuesday 9. first of April.
Put off till Thursday the 17th
of April.

F 249692



HSS
B  L
DISCARD